

W. L. HOLBROOK,	)	AGBCA No. 2003-140-R
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Appellant	)	
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**RULING ON GOVERNMENT-S MOTION FOR RECONSIDERATION**

**March 6, 2003**

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

**Opinion for the Board by Administrative Judge POLLACK. Separate Concurring Opinion by Administrative Judge VERGILIO.**

The Forest Service (FS) has filed a Motion for Reconsideration dated December 17, 2002, asking the Board to reconsider that part of its decision in AGBCA Nos. 2000-174-1 and 2000-175-1 awarding Appellant \$8,211.42 for removal costs of the foundation for the radio tower placed on the property. W. L. Holbrook, AGBCA Nos. 2000-174-1 et al., 03-1 BCA & 32,103. The Government essentially argues that the majority erred in that the foundation cannot be damage since it was part of the radio tower contemplated by the parties as part of the contract. The Government reargues its reliance on Modern Realty Corp. v. United States, 133 F. Supp. 802 (Mass. 1955) and the Government-s interpretation of HG Properties A. L. P., GSBICA No. 15219, 01-1 BCA & 31,376.

Reconsideration is discretionary with the Board and will not be granted in the absence of compelling reasons, *i.e.*, clear error of fact or law, or newly discovered evidence that could not have been discovered at the time of the original proceeding. Reconsideration is not intended to permit a party to reargue its position or to present additional arguments that could have been presented originally. John Blood, AGBCA No. 2002-114-R, 02-1 BCA & 31,830; Thomas R. Prescott, AGBCA No. 2000-108-R, 00-1 BCA & 30,722; Timber Rock Reforestation, AGBCA No. 97-194-R, 98-1 BCA & 29,360; Rain & Hail Insurance Service, Inc., AGBCA No. 97-180-R, 97-2 BCA & 29,121; White Buffalo Construction, Inc., AGBCA No. 95-221-R, 96-1 BCA & 28,050.

The majority in its decision recognized that the contract contemplated and allowed the FS to install a radio tower either on the roof of the building or freestanding on the site. Logically, a free standing radio tower would have to sit on a foundation. The FS chose to install the freestanding tower and anchored that tower by sinking three deep concrete pilings into the ground (approximately 15 feet in depth) and spaced several feet apart. At the close of the lease the FS chose to remove the radio tower portion but left the foundation pilings. The foundation pilings noticeably protruded out of the ground. Had the FS left the tower with the foundation intact, the argument presented by the FS might have merit. In that instance, the Appellant would be seeking removal of what it expressly allowed. However, in this instance, the FS removed the tower portion, but left the protruding foundation. The foundation without the tower had no use, what was left was materially different than what the contract contemplated (a foundation as part of the tower). Moreover, the foundation that remained was an eyesore and limited the use of the property in that area. Therefore, it was a detriment to the property, *i.e.*, in this case damage. The FS has continued to not give weight to these facts, and to the fact that the contract never contemplated the FS leaving a useless protruding foundation sitting on the property at the end of the lease.

### **RULING**

The Government's Motion for Reconsideration is denied.

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**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

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**ANNE W. WESTBROOK**

Administrative Judge

**Concurring Opinion by Administrative Judge VERGILIO.**

I concur with the majority's conclusion that the Government has not raised a sufficient basis to support Board reconsideration. The Government recognizes in its underlying motion that it has already made the argument on its view of the law. The Board considered the argument in the opinions on the merits; the majority and dissent reached different conclusions regarding liability for the radio tower foundation. The same arguments, without a reference to recent case law that indicates a contrary result, do not serve as a basis for reconsideration. In such circumstances, a motion for reconsideration unnecessarily consumes the time and effort of the Board and parties. A motion for reconsideration should not be a routine submission for the party that did not prevail; reconsideration is not the vehicle to correct a majority decision containing a considered, but clear error of law.

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**JOSEPH A. VERGILIO**

Administrative Judge

**Issued at Washington, D.C.**

**March 6, 2003**